

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Facilitating the Provision of Spectrum- Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services))))))	WT Docket No. 02-381

To: Wireless Telecommunications Bureau

COMMENTS OF NTCH, INC.

1. Statement of Interest.

NTCH, Inc. (“NTCH”) hereby submits reply comments regarding the above-captioned Notice of Inquiry (“NOI”). NTCH, Inc., through its operating subsidiaries (collectively, “NTCH”), is a CMRS provider that currently offers voice-only wireless service in rural and underserved BTAS in Colorado, Idaho, Tennessee and Alabama. NTCH is also licensed to provide service in California and Arizona, but has not yet commercially launched its service in those markets.

NTCH is a privately held company formed in July 1999 after its principal, Glenn Ishihara, successfully bid on nine (9) small rural PCS licenses in Auction 22. NTCH offers CMRS under the brand name “Clear Talk” and the registered service mark “Wireless Made Simple.”

NTCH presently serves 25,000 customers and is adding between 1,500 and 3,000 customers per month. NTCH offers its customers landline-replacement quality service and

advanced features for an average monthly bill of less than \$40. In each of its markets, NTCH offers a flat rate calling plan with unlimited local minutes. NTCH has 137 cell sites in service, and has constructed over 175 co locatable towers in rural and underserved areas. NTCH has pushed service out to rural customers in areas with poor cellular coverage by constructing sites required for landline-replacement-quality PCS service. NTCH generally provides local switching. NTCH provides local customer care for its customers, which, among other things, creates local jobs.

Notwithstanding NTCH's efforts to overcome various obstacles and provide quality, low-cost service to customers in rural, underserved areas, NTCH struggles to break even or turn a profit on the provision of wireless service, even after investing tens of millions of dollars. NTCH does not take issue with the business realities of competition, so long as such competition occurs on a relatively level playing field.

2. Rural Versus Urban Distinctions Are Necessary And Appropriate.

NTCH believes that if the cost per subscriber in terms of infrastructure and network costs for rural populations versus metro populations were calculated and compared, then such a cost analysis would show that it costs significantly more to provide service to rural customers than to urban customers. Large carriers know this too, and behave accordingly. Commission relief in the form of rural/urban differentiations is therefore necessary and appropriate.

3. Rural Carriers Need Cost Recovery Mechanisms And/Or Relief From Unfunded Mandates In Order To Ensure Quality Service To Rural Customers.

The imposition of unfunded mandates (e.g., CALEA, E911, TTY) -- whereby rural carriers are required to meet the same compliance standards as large, urban carriers, irrespective of the significantly different market and cost-spreading realities -- makes it extremely difficult for small, rural carriers to remain economically viable -- let alone competitive.

NTCH believes that competition and quality of service in rural markets is adversely affected because large, urban carriers are able to subsidize their unprofitable rural operations with revenues from dense urban areas. For example, urban carriers are able to effectively subsidize unfunded mandates such as CALEA and E911. Barring some Commission relief, rural carriers cannot effectively compete because they lack the necessary population densities to distribute the costs for infrastructure -- and unfunded mandates -- to their customers while still offering service at competitive prices. These unfunded mandates are very damaging to small carriers like NTCH who must try to pay for these mandates in an environment in which small carriers struggle merely to expand their business to more customers. While NTCH recognizes the importance of these unfunded mandates, NTCH nonetheless believes that governmental relief should be provided for rural carriers based upon an adequate showing of market coverage and service. To protect against abuses of such relief, the Commission could require a showing of profitability for any rural carrier eligible for such relief. To protect against anticompetitive behavior by large carriers and/or their rural fronts, NTCH believes that the Commission should require a showing that service is being offered profitably, or the carrier must make its network available for sharing with other rural carrier(s), or the carrier must get out of the market.

The procedural difficulties associated with obtaining USF support, notwithstanding rural carriers' obligations to contribute to USF, also make it difficult for small, rural carriers to remain

economically viable and competitive. USF eligibility rules should be better standardized and should also be revised to ensure that the eligibility review process is not tainted in any way by interested carriers with strong political connections. For example, NTCH believes it is able to come in and offer a better service at least cost with less impact on the environment for truly rural areas and we have been prevented from accessing the government funds set aside to subsidize this exact service. NTCH therefore believes the Commission should specifically rule that all wireless carriers can compete with local carriers for USF funds, and then the rural customer can decide who provides the best quality service for the best price. Such measures would clearly provide the incentive for expanding all coverages to rural areas. By contrast, the current system provides a disincentive for expansion of coverage into rural areas because rural wireless carriers must compete with the landline carriers' subsidized service while the landline carriers are allowed to create competitive barriers.

NTCH believes that the Commission could enact measures to prevent a host of ways in which incumbent landline carriers prevent effective competition from rural wireless carriers. For example, in order to interconnect to a rural landline carriers network, rural wireless carriers are often required to supply highly- priced end office trunking to different cities within the rural landline carrier's network -- even though the landline carrier could provide a single point of interconnection and even though the landline carrier is already connected to an RBOC or large regional ILEC (the same as the rural wireless carrier) and could therefore simply pass traffic there. Hence, rural wireless carriers are confronted with the choice of two economic evils: either establishing costly end office trunks within a rural landline network or paying transit charges of four cents a minute or more per call to an RBOC or regional ILEC.

Rural wireless carriers also confront the situation whereby landline carriers and/or RBOCs refuse to sell T-1s to wireless carriers at UNE rates. Highly tariffed T-1 rates make it extremely difficult for small, rural carriers to remain economically viable and competitive. For example, a UNE T-1 may cost a rural wireless carrier \$250 per month, whereas a tariffed T-1 may cost the same rural wireless carrier upwards of \$1,200, *plus* distance-based charges as well.

4. The Commission Should Allow Network Sharing And Spectrum Hibernation.

NTCH supports the concept of Band Manager Licensing, and/or other mechanisms that would allow a carrier to pull or hibernate spectrum if the carrier is sharing a network with another carrier in a rural area. Allowing carriers to do this would facilitate network sharing and ensure greater competition, better coverage, and a better, broader deployment and choice of services that benefit consumers. NTCH believes that rural carriers should be allowed to enter into network sharing arrangements whereby spectrum is pooled and redundant buildout requirements are eliminated. NTCH believes that the economics of small rural markets may simply be insufficient to support extensive multi-carrier competition.

NTCH recognizes that performance requirements of some kind are necessary to insure that carriers build-out markets and offer services to customers in these markets. Performance requirements should also serve to deter companies from holding licenses for speculation. However, NTCH believes that performance standards should not apply to individual carriers when they are engaged in network sharing. To protect against anticompetitive behavior by large carriers and/or their rural fronts, NTCH believes that the Commission should require a showing

that service is being offered profitably or the carrier must get out of the market or the carrier must make its network available for sharing with other rural carrier(s).

5. The Commission Should Allow Band Manager Licensing And/or Other Mechanisms That Facilitate Less-Expensive Deployment Of Coverage And Services.

NTCH supports the concept of Band Manager Licensing, and/or other mechanisms that would allow a carrier to pull or hibernate spectrum if the carrier is sharing a network with another carrier in a rural area. Allowing carriers to do this would facilitate network sharing and ensure greater competition, better coverage, and a better, broader deployment and choice of services that benefit consumers. NTCH believes that rural carriers should be allowed to enter into network sharing arrangements whereby spectrum is pooled and redundant buildout requirements are eliminated. NTCH believes that the economics of small rural markets may simply be insufficient to support extensive multi-carrier competition.

To protect against anticompetitive behavior by large carriers and/or their rural fronts, NTCH believes that the Commission should require a showing that service is being offered profitably or the carrier must get out of the market or the carrier must make its network available for sharing with other rural carrier(s).

6. The Commission Should Endeavor To Protect Against Anticompetitive Behavior By Large Carriers And Their Rural Fronts.

One potential solution to the dominance of large carriers over true entrepreneurs is for the Commission to require that large carriers must account separately for their rural operations and

must price them to make a profit with a limited amount of loss months when starting service in an area.

A related problem confronting entrepreneurial carriers is the large carriers' barrage of often misleading advertising. NTCH believes that the Commission could affect measures to combat misleading advertising. For example, the Commission could require certain factual disclosures in carriers' advertisements, such as the average amount that their customers actually pay on any given plan they are plugging. A leading consumer magazine, for instance, reported that a national carrier's \$50 family plan may actually cost as much as \$500. The Commission could also require disclosure of the average amount or percentage of their customers' minutes that are actually long distance or roaming. The Commission could also require disclosures in reasonable font sizes; e.g., carriers could be allowed to only advertise anytime minutes in their advertisements except for small print and could be required to state the highest per minute rate in at least the same font size as anytime minute or pricing claims.

7. The Commission Should Grant Relief To Auction 35 Winning Bidders That Paid For Their Licenses.

With respect to auctions, NTCH believes that the Commission needs to ensure that its policies and practices do not tie up rural carriers' capital that could otherwise be put to use in building out rural networks and deploying services to rural customers. For example, certain Auction 35 bidders were allowed to opt out of their auction obligations, while successful Auction 35 bidders that actually paid for their licenses – at auction prices inflated by bidding for the NextWave licenses – are precluded from opting out of their obligations.

NTCH believes that the Commission should allow successful bidders in Auction 35 the opportunity to opt out. After recognizing that licenses were overvalued (overbid) in Auction 35, the Commission allowed large companies to opt out after only paying a deposit for licenses. However, the Commission provided no relief to those bidders who bought and paid for their Auction 35 licenses. As detailed in other carriers' filings, the Commission clearly explained the conditions of Auction 35 to all bidders, yet the Commission ultimately allowed a select group to be relieved of all Auction 35 obligations after-the-fact. The Commission's selective relief has prejudiced small carriers who are now stuck with licenses that are – by the Commission's own admission – overvalued. This overvaluation has in turn deprived rural carriers of much-needed capital and has further frightened the capital markets – thereby drying up sources of capital which rural carriers need to expand their networks and provide quality, competitive service to rural customers.

8. The Use of Unlicensed Spectrum Warrants Some Oversight By the Commission.

Unlicensed wireless uses may effectively destroy backhaul paths used by licensed wireless carriers. One potential solution: dedicated unlicensed backhaul spectrum for licensed wireless carriers, subject to appropriate sharing requirements. NTCH believes that the recent growth of wi-fi and wireless internet creates interference problems for the existing unlicensed microwave backhaul paths of rural carriers. Those microwave backhaul paths are needed to allow rural carriers to avoid the increasingly expensive – if not exorbitant - T-1 backhaul costs charged by landline carriers. Moreover, many rural wireless carriers have already deployed infrastructure for such backhaul purposes. As interference from unlicensed spectrum increases,

the costs to replace unlicensed microwave backhaul paths with licensed microwave paths increases. Moreover, those costs typically increase during the Commission's application processing period. NTCH therefore suggests that the Commission consider mechanisms whereby the Commission separates a channel or two from the unlicensed band solely for microwave backhaul in rural areas, and/or the Commission mandates a cap on what rural carriers can be charged for landline T-1 backhaul and the installation costs for those backhails.

Conclusion

The 1996 Act was intended to promote competition in the marketplace, which in turn should result in more services at better prices to the consumer. The Act also provides for a level playing field for all competitors. If indeed the Communications Act of 1934 has a statutory mandate to promote the deployment of these services and economic opportunities to rural areas, then Commission relief for rural markets is needed, and quickly. If no relief and/or cost recovery mechanisms for rural wireless carriers is forthcoming, then rural markets will likely regress to anticompetitive monopolies where customers ultimately pay more for less, i.e., fewer services of lower quality, with slow or no deployment of new services and technologies.

Respectfully submitted,

/s/
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February 18, 2003